

BOARD OF AGRICULTURE, TRADE AND CONSUMER PROTECTION MINUTES

May 14, 2014

The Board of Agriculture, Trade and Consumer Protection met on May 14, 2014, beginning at 9:00 a.m. for a tour of Alsum Farms & Produce, located at N9083 Cty Hwy EF Friesland, WI 53935. The Board then held its official business meeting at the same location beginning at 10:48 am. The meeting was preceded by public notice as required by s. 19.84, Stats.

Call to Order

Board Chair Andy Diercks called the meeting to order at 10:48 a.m.

Members Present

Michael Dummer, Miranda Leis, Andy Diercks, Mark Schleitwiler, Nicole Hansen, Dennis Badtke, Dean Strauss, and Doug Wolf were present. John Koepke was absent.

Minutes

Motion

Nicole Hansen made a motion, which was seconded by Mike Dummer, to approve the March 19, 2014 Board minutes. Motion approved unanimously.

Public Appearances

Tom Lochner, on behalf of the Wisconsin Cranberry Growers Association, appeared before the board to encourage them to approve the hearing draft of ATCP 142, relating to the Cranberry Marketing Order, which would allow the Department to move ahead with holding public hearings. The Association recommends also holding informational sessions before each of the hearings to explain the changes to the order and how they may impact growers.

Alice in Dairyland 2013-2014 Report

Kristin Olson, the 66th Alice in Dairyland, presented her end year summary which included a PowerPoint of her year as Alice.

The Alice in Dairyland position is a unique and important part of Wisconsin's promotional and informational efforts, connecting consumers to agriculture by conducting media interviews, speaking at urban and rural community events and educating school students.

Throughout the past year, Kristin focused on spreading two key messages that reflect the goals and work plan of DATCP:

- Agriculture is a diverse industry vital to Wisconsin's economic development, generating \$59.16 billion annual impact
- Buying Wisconsin grown products supports Wisconsin agriculture and local farmers, producers, processors, communities and economies.

In her year as Alice, Kristin travelled over 34,000 miles and generated media coverage with 37 television interviews, 335 speeches, 110 radio interviews, 38 print interviews and 666 internet postings featuring those key messages. She also developed and executed three industry partnerships for campaign blitzes with a fourth planned in the near future.

Board Chair Andy Diercks, on behalf of the Agency and the Agriculture, Trade & Consumer Protection Board, presented a plaque to Kristin recognizing her many accomplishments and for her dedication and commitment to her role as the 66th Alice in Dairyland.

ATCP 141 Cherry Marketing Order (Scope Statement)

Noel Favia, Staff Support Specialist in the Division of Agricultural Development, presented the scope statement for ATCP 141.

This scope statement proposes amendments that will alter the method for electing representatives to the Cherry Board so that all board members are elected at large and would reduce the number of representatives from 7 to 5 in order to assure fair representation for cherry producers and more effectively achieve the purposes of Ch. 96, Stats.

The current Cherry Marketing Order provides for 2 election districts with 3 board members representing each district and 1 board member elected at large. Over the years, the number of cherry producers has decreased to 33 producers and the distribution of producers has become concentrated primarily in what was the northern of the 2 districts.

Motion

Mike Dummer moved, seconded by Dennis Badtke, to approve the scope statement for ATCP 141. Motion approved unanimously.

ATCP 142 Cranberry Marketing Order (Hearing Draft)

Noel Favia also presented the hearing draft for ATCP 142 relating to the Cranberry Marketing Order.

Wisconsin produces more cranberries than any other state in the nation. In 2012, Wisconsin growers produced 4,830,000 barrels of cranberries. Cranberry is the state's No. 1 fruit crop in both value and acreage. The cranberry industry currently provides nearly \$300 million annually to the state's economy and supports approximately 3, 400 jobs across the state.

Cranberry assessments have been used to effectively expand the market for the cranberries. Assessments also support crop and environmental research including sustainable production practices, nutrient management, water conservation and water quality protection. The current maximum rate of assessment of ten cents per barrel has existed since 1983. To continue successful marketing and research, the Cranberry Board believes increased funding is required.

The proposed rule increases the maximum assessment authority of the cranberry marketing board from ten cents per barrel to a maximum of 15 cents per barrel beginning the year this amendment becomes effective, then increasing to a maximum of 20 cents per barrel beginning in 2017 to a full maximum of 25 cents per barrel beginning in 2019.

Motion

Miranda Leis made a motion, seconded by Dean Strauss, to approve the hearing draft rule of ATCP 142. Motion approved unanimously.

Wisconsin Agricultural Statistics Services (WASS) Report

Greg Bussler, State Statistician, presented a follow up PowerPoint to the Board relating to the recent release of the 2012 Census of Agriculture. The Census of Agriculture is the largest survey that the Wisconsin Agricultural Statistical Service (WASS) conducts surveying 3 million people. The survey is conducted every 5 years and is sent to farms or ranches and the people who operate them.

The presentation focused more closely on the numbers related to Land, Land in Farms, Selected Characteristics of Farms by North American Industry Classification System (NAICS), Selected Operator Characteristics for Principal, Second, and Third Operator, Renewable Energy, and Farms with Internet Access.

Census data can be found online at www.agcensus.usda.gov or by contacting a local NASS field office.

**ATCP 88, 70, & 75 Egg Grading, Handling, Labeling; Food Processing Plants;
Retail Food Establishments (Hearing Draft)**

Steve Ingham, Division Administrator for the Division of Food Safety presented the Hearing Draft of ATCP 88, 70, and 75.

The Division of Food Safety has received numerous inquiries requesting clarification of the licensing and inspection requirements for shell eggs, particularly from people who seek to sell eggs at their farm or at a farmers' market. The rule was also developed in response to a request from the legislature. The Assembly Committee on Consumer Protection reviewed ATCP 88, Egg Grading, Handling and Labeling and identified inconsistencies and suggested potential improvements to the rule. Further, this rule will implement 2013 Wisconsin Act 245, which exempted egg producers with a flock of not more than 150 birds who sell eggs directly to the consumer on the premises where the eggs were laid, at a farmers' market or on an egg sales route from obtaining a food processing license if they meet packaging and labeling requirements.

This proposed rule is a comprehensive revision of food safety regulations related to eggs. The rule repeals the existing ATCP 88, Egg Grading, Handling and Labeling and comprehensively rewrites it to clarify the regulatory requirements applicable to egg producers and egg handlers, and makes minor revisions to ATCP 70 and 75. The rule consolidates egg-related requirements into one rule, reducing the need for egg producers to consult multiple chapters of rules to understand regulatory requirements. The proposed rule will also help businesses by eliminating the requirement for small-scale egg producers to hold a food processing plant license when selling eggs at a farmers' market, on an egg sales route, or at an egg producer's farm. The proposed rule removes obsolete provisions in the existing rule, provides explanations to improve rule clarity, and spells out federal registration requirements that must also be met by some egg producers and egg handlers. If adopted, the rule will assist those people who seek to sell a small number of shell eggs, as well as those who operate larger egg production businesses, by clarifying licensing and inspection requirements.

Motion

Mike Dummer made a motion, seconded by Nicole Hansen, to approve the hearing draft rule of ATCP 88, 70 & 75. Motion approved unanimously.

Food Safety Modernization Act Update (FSMA) Report

Steve Ingham, Division Administrator for the Division of Food Safety, along with John Petty, Division Administrator for the Division of Agricultural Resource Management, presented an update on the FDA's Food Safety Modernization Act (FSMA).

Currently seven proposed rules have been issued to implement FSMA. The comment period for five of those rules has expired with the comment period for the two remaining rules, Sanitary

Transportation of Food and Intentional Adulteration of Foods, remaining open until May 31 and June 30 respectively.

There has been a considerable amount of feedback from state regulators and manufacturers regarding the conflicting definitions used in several of the rules, the authority of enforcement of these rules, the effect on sales of food processing and distilling wastes for animal feed, and the need for more training curriculum to understand and implement the rules.

The Department is currently working on collecting and submitting comments relating to the Intentional Adulteration of Foods rule and how this will affect dairy farm operations.

Six Sigma Program Status Report

Perry Brown, Agency Six Sigma Coordinator, along with Lisa Schultz from the Division of Agricultural Resource Management and Erin Nutter accompanied by Jim Pikka from the Division of Food Safety, presented a PowerPoint presentation providing an update on the implementation of the past DATCP Six Sigma projects, information on the 10 new Six Sigma projects and a summary of the Agency Six Sigma staff training.

DATCP's Six Sigma- Continuous Improvement program was initiated under the Governor's Executive Order #66. The Department's Six Sigma projects all follow the Agency goals of:

- Reducing processing/delivery time, by 10% -30%, for customers receiving a business product or service from the Agency
- Repurpose DATCP staff workload as a result of lean methodologies creating efficiencies in business service activities.
- Improve external customer satisfaction.

ATCP 104 Leaf Tobacco Buying & Selling (Hearing Draft)

Jeremy McPherson, Director of the Grain Inspection Services section in the Division of Trade & Consumer Protection, presented the hearing draft of ATCP 104.

The existing ch. ATCP 104, Wis. Adm. Code, regulates leaf tobacco buyers and the selling of their crop. This rule was originally promulgated as Department of Agriculture General Order #138 in 1952. At that time, tobacco farming was a prominent business in Wisconsin and much of the crop was sold in cash markets. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract. This means that ch. ATCP 104, Wis Adm. Code, as it is currently written, is irrelevant to the current industry. The department is requesting this rule be repealed.

Motion

Mike Dummer made a motion, seconded by Miranda Leis, to approve the hearing draft rule of ATCP 104. Motion approved unanimously.

ATCP 134 Residential Rental Practices (Hearing Draft)

Sandy Chalmers, Division Administrator for the Division of Trade & Consumer Protection, along with Michelle Reinen, Director of the Bureau of Consumer Protection, presented the ATCP 134 hearing draft.

DATCP enacted ch. ATCP 134, Wis. Adm. Code, in 1980 with a revision made in 1998. The existing rule regulates rental transactions between landlords and residential tenants.

In 2011, Wisconsin Act 143 made changes to landlord tenant interactions relating to:

- Disclosures required before entering into a rental agreement.
- Returning security deposits.
- Withholding security deposits.
- Prohibiting certain rental agreement provisions.
- Violations of Landlord Tenant law may constitute a violation of the Unfair Trade Practices Law.

2013 Wisconsin Act 76 also made additional changes to the landlord tenant requirements in ch. 704, Stats. Including:

- Disposing of personal property left behind by a tenant.
- Damage to premises due to action or inaction of the tenant.
- Check-in sheets.
- Requiring notice of domestic abuse protections.
- Prohibition on rental agreement terms that allows Landlord to terminate tenancy if a crime is committed in or on the rental property.

Due to these changes, ATCP ch. 134 was revised to better conform the rule to the provisions of ch. 704, Stats. And ensure that enforcement of the rule will not change a right or duty as provided within the statute.

Motion

Dennis Badtke made a motion, seconded by Dean Strauss, to approve the hearing draft rule of ATCP 134. Motion approved unanimously.

Appointments to Standing Advisory Councils

Secretary Ben Brancel presented to the Board pending appointments to the Department's six standing advisory councils. The standing advisory councils are created to advise the Department. The five currently active standing advisory councils are: Aquaculture Industry Advisory Council; Organic Advisory Council; Rural Energy Management council; Agrichemical Technical Advisory Council; and the Agricultural Chemical Cleanup Council.

Motion

Nicole Hansen made a motion to approve the pending appointments for all five standing advisory councils. This was seconded by Mike Dummer. Motion approved unanimously.

EPA Clean Water Act Proposal Update

David Meany, Chief Legal Counsel for the Office of the Secretary, provided a summary and update on the U.S. Environmental Protection Agency (EPA) recently proposed rule clarifying jurisdiction under the Clean Water Act.

The EPA and U.S. Army Corps of Engineers (Army Corps) jointly released a proposed rule to clarify protection under the Clean Water Act for streams and wetlands that form the foundation of the nation's water resources. The EPA claims the proposed rule will benefit businesses by increasing efficiency in determining coverage of the Clean Water Act.

Determining Clean Water Act protection for streams and wetlands became confusing and complex following Supreme Court decisions in 2001 and 2006. For nearly a decade, members of Congress, state and local officials, industry, agriculture, environmental groups, and the public asked for a rulemaking to provide clarity.

The proposed rule clarifies protection for streams and wetlands. The proposed definitions of waters will apply to all Clean Water Act programs. The EPA further claims that it will not protect any new types of waters that have not historically been covered under the Clean Water Act and is consistent with the Supreme Court's more narrow reading of Clean Water Act jurisdiction.

The proposed rule is open for public comment for 90 days from publication in the Federal Register. The interpretive rule for agricultural activities is effective immediately.

Board Member Reports

Mark Schleitwiler- Everything has been calm on the work front with no major projects going on which has been a nice change for Mark. Mark's youngest daughter graduates on Friday and has

been accepted to the University of Montana so he is looking forward to an upcoming road trip out there.

Miranda Leis- Miranda thanked Alsum Farms and Produce for the tour earlier that morning. This day marks the one year anniversary of the Organic Valley fire. Yesterday everyone was able to move completely back into the building. At home, everything is very wet and she is waiting for it to dry out more before she can start planting. The kids are busy and looking forward to summer.

Doug Wolf- Doug had a good week with getting the corn and soybeans in and felt very fortunate to have healthy pigs after a recent illness outbreak.

Dean Strauss- Dean's planting is a little further behind Doug as they recently received several inches of rain and need to dry out first. He is anticipating getting his hay planted by the first of June but is currently enjoying the record high milk prices.

Dennis Badtke- Dennis informed the board that he will have a land price update coming in the future. Land sales have not peaked yet and continue to look strong.

Mike Dummer- With a tight window, there was a wide range of between 25% to 75% planting done in central Wisconsin at this time. Mike thanked the department for reviewing and approving his Farmland preservation plan recently. Mike also gave an overview of his recent trip to Kenya, Africa to celebrate his 40th wedding anniversary and visit his daughter.

Andy Diercks- Andy reported that it was a pretty small window but a few farmers were able to get some of their potatoes in. On the positive side, almost all his corn was able to be planted. Andy is looking forward to warmer and dryer days ahead.

Nicole Hansen- On the cranberry front, Nicole has been frost-checking the crop to make sure none of the crop freeze with an overnight frost. Currently the crops are about a week behind but the plants are in bud form and will start coloring up and fully bloom in June. Nicole attended the Spring Growers Workshops which is a great way to network and gear up for the upcoming season.

Secretary's Report

The Secretary gave remarks in March at the Hmong Ginseng Growers Conference in Wausau. Division of Trade & Consumer Protection staff member Jack Chang, along with the Ginseng Growers Association, played a key role in reaching out to a large number of Hmong farmers and sharing with them the services our Agency can provide in relation to Ginseng production. This conference sparked a partnership with the Michigan State University and seasoned ginseng growers were able to share methodologies and practices with the Hmong ginseng growers.

On March 28th, along with the Bureau of Land and Water Resources staff, the Secretary participated in an agency panel to discuss DATCP's roles in nitrogen management at Wisconsin's Nitrogen Summit, a program hosted by the UW- Madison College of Agricultural and Life Sciences. The program brings agricultural and environmental stakeholders together to discuss nitrogen presence and pathways in Wisconsin's surface water and groundwater.

The Department recently welcomed 39 participants to the "Exporting Livestock and Genetics" seminar held in Madison in early April. The speakers provided tools and techniques for exporting livestock and genetics giving participants greater understanding of the regulations and logistics needed.

The Lagos Business School of Nigeria recently sent 60 Nigerian students to the Madison Concourse Hotel where the Secretary met and spoke with them regarding business set up and development here in Wisconsin. Nigeria will soon be one of the five largest populated countries in the world.

This weekend, the 67th Alice in Dairyland Finals will be held in Clark County. Alice, our state's agriculture ambassador, will spend the next year touring communities, agribusiness and schools promoting Wisconsin's \$59 billion agriculture industry. The current Alice in Dairyland finalists include: Allyson Binversie from Manitowoc, Zoey Brooks from Waupaca, Katie Dogs representing Watertown, Kristin Klossner from New Glarus, Melissa Ploeckelman from Stetsonville and Whitney Rathke representing Fredonia.

With the food shortages and food safety concerns rising around the globe, the Department's Division of Food Safety welcomed groups from Kazakhstan and Kosovo last month. Both groups were very interested in our food safety inspections, regulations and structure, dairy products, dairy herd health and farm management related to milk production.

Plant product exports certified in the first quarter by DATCP continued the record pace of late 2013, reaching more than 3,300 certificates issued from January through March 2014. That's up 60% from the same period a year ago and 11% above the previous record of 2010.

DATCP issued a notice last week in advance of the annual gypsy moth spraying in Southern Wisconsin, with Northern Wisconsin to follow in August. The spraying is done to kill the caterpillars, which can feed on leaves of many species of trees and shrubs.

Milk prices are still strong. Production has gone down on average roughly 6-10 pounds per day per cow in many herds, as producers are using 2013 feed that has lower nutritional value, due to the weather during the growing season (extreme wetness, late plant, late harvest and shorter fermentation process in feed bunks given the early hard winter and sustained deep freeze). The downward production and higher prices create challenges for dairy plants.

On May 1, at Lane Creek Dairy Farm in La Crosse, Governor Walker announced 43 recipients of \$200,000 in the latest round of Grow Wisconsin Dairy 30x20 grants. The goal of the 30x20

initiative is to increase Wisconsin's milk output to 30 billion pounds by 2020, by helping farmers invest in management, develop expansion plans, and transition their farms to the next generation.

Future Schedule and Agenda Items

The Board is scheduled to meet July 23rd in Madison. The Board requested to hear from the Manure Management Task Force and would like to tour a captive wildlife farm and an egg farm.

Adjournment

By unanimous consent, the Board adjourned at approximately 3:40pm

Andy Diercks, Board Chair

Miranda Leis, Secretary